

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

EDARIEL MELENDEZ,

Petitioner,

v.

STATE OF NEW JERSEY et al.,

Respondents.

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Civ. No. 18-8404 (KM)

MEMORANDUM AND ORDER

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. His petition was initially administratively terminated as it was not accompanied by a proper filing fee or by an application to proceed *in forma pauperis*. Petitioner subsequently paid the proper filing fee, and the case shall be reopened.

The form on which Mr. Melendez filed his petition lacks the required notice under *Mason v. Myers*, 208 F.3d 414 (3d Cir. 2000). Consequently, the Court will now provide the required notice: This *pro se* petitioner that may either (1) have his petition ruled on as filed, or (2) withdraw the petition and file one all-inclusive § 2254 petition “within the one-year statutory period.” *Mason*, 208 F.3d at 418 (internal quotation marks omitted); *see also United States v. Miller*, 197 F.3d 644, 652 (3d Cir. 1999) (same for a § 2255 petition). This notice is required “out of a sense of fairness,” because the Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”) may restrict the grounds that can be raised in any later petition. *Mason*, 208 F.3d at 418; *see also Holden v. Mechling*, 133 F. App’x 21, 22 (3d Cir. 2005).

Within 45 days, petitioner shall notify the Court as to whether he (1) wishes to have his petition ruled on as filed or (2) wishes to withdraw his Petition and submit one all-inclusive §

2254 Petition. If Petitioner wishes to submit an amended petition, he shall submit the amended petition within 45 days of the date of this Court's Order.

Accordingly, IT IS, this 30th day of October 2018

ORDERED that the Clerk of the Court shall reopen the case for the purpose of considering this issue; and it is further

ORDERED that petitioner shall notify the Court within 45 days of the date of this Order whether he wishes to have his Petition ruled on as filed or whether he wishes to withdraw his petition and submit one all-inclusive § 2254 petition; and it is further

ORDERED that if the petitioner wishes to withdraw his original petition and submit one all-inclusive amended petition, he must submit the amended petition within 45 days after the date of this Court's Order; and it is further

ORDERED that, if petitioner fails to submit for filing an amended § 2254 petition within 45 days of the date of the entry of this Order, then this Court will consider Docket Entry Number 1 as petitioner's one and only all-inclusive § 2254 petition; and it is further

ORDERED that the Clerk shall again administratively terminate the proceeding pending petitioner's response on this issue; and it is further

ORDERED that the Clerk of the Court shall serve a copy of this order on petitioner by regular U.S. mail, accompanied by a blank Petition for Relief from a Conviction or Sentence by a Person in State Custody, Form AO 241 (modified):DNJ-Habeas-008(Rev.01-2014); and it is further

ORDERED that the Clerk's service of the blank habeas petition form shall not be construed as this Court's finding that the original petition is or is not timely or that petitioner's claims are or are not duly exhausted.

A handwritten signature in black ink, appearing to read "Kevin McNulty", with a stylized flourish at the end.

KEVIN MCNULTY
United States District Judge